

## **Q&A - PEO legislation (Senate Bill 5373, sections 8-17)**

### **Updated October 17, 2007**

#### **Q1. What is a professional employer organization (PEO)?**

- A. A professional employer organization (PEO) is a business that has an agreement with one or more client companies to manage their human-resource issues, such as workers' compensation, payroll and unemployment insurance.

PEOs do not include independent contractors, temporary-staffing companies, service-referral agencies, third-party payers, labor organizations or common-pay agents.

The Employment Security Department has proposed a regulation (rule) to legally define the term "professional employer organization" ([WAC 192-300-200](#)).

#### **Q2. What does it mean to be a co-employer?**

- A. The term "co-employer" refers to both the PEO and the client company. It means that both must register with the department. The legal definition of "co-employer" is in section 8(3) and (6) of the law. To read the law, log onto [www.leg.wa.gov](http://www.leg.wa.gov), click on the "Bill Search" tab and type in the bill number (5373).

#### **Q3. How do PEOs register their client companies? Is there a form?**

- A. All PEOs that have client companies in Washington must provide the department with all of the following information for each client company:
- Name;
  - Address;
  - Unified business identifier;
  - Employment Security reference number (current or former);
  - Names and Social Security number of each corporate officer, owner or limited-liability company member;
  - Physical address in Washington state where payroll records will be available for inspection (please also see Q9); and
  - A signed [power-of-attorney form](#) (please also see Q12).

PEOs can report their client companies' information electronically or on the department's form. Data specifications and forms are available online at [www.peo.go2ui.com](http://www.peo.go2ui.com).

**NOTE:** All PEOs were required to register existing client companies by September 1, 2007. All new client companies must be reported within 30 days. Read the proposed rule ([WAC 192-300-210](#)) for details.

#### **Q4. What if the client company doesn't have any employees?**

- A. At this time, PEOs must register all client companies that do business in Washington, even if they have no employees in the state.

**Q5. Why does the PEO have to report the client company's owners or corporate officers?**

- A. In most cases, business owners and corporate officers are not eligible for unemployment benefits. PEOs have to register owners and corporate officers to make sure people who are not eligible for benefits do not collect them.

Also, a new law requires this information for all employers in Washington, not just PEOs, and it holds corporate officers and other business owners personally liable if they deliberately try to evade their tax bills.

**Q6. How can I find out if a client company has an Employment Security account number (ES reference number)?**

- A. Please send an Excel spreadsheet with the client company's/companies' name, unified business identifier (UBI number), and city and state. Employment Security staff will research the company and return the spreadsheet with the ES reference number filled in. E-mail to [status@esd.wa.gov](mailto:status@esd.wa.gov).

**Q7. What if the client company doesn't have an Employment Security account number (ES reference number) or unified business identifier (UBI number)?**

- A. Businesses are assigned a UBI number when they register to do business in Washington state. If the client company does not have a UBI number, it must apply for a business license. The master business application is online at [www.dol.wa.gov/forms/700028.html](http://www.dol.wa.gov/forms/700028.html). (Note: If the company does not have a UBI number, it is not registered with the departments of Labor & Industries nor Revenue.)

If a client company has a UBI number, but has never had an ES reference number, the PEO must complete the [Report New Client](#) form, and the Employment Security Department will establish an ES reference number for that client company.

**Q8. Why do PEOs have to register client companies separately with Employment Security when they have already registered with the Department of Labor & Industries?**

- A. The Department of Labor & Industries doesn't capture the same information we need. For example, employers report the total number of employee hours as a group to L&I, while we need information broken out by employee.

**Q9. Do PEOs outside Washington state have to register?**

- A. If the PEO has a client company that does business or has employees in Washington, it must register. It does not matter where the PEO is located nor whether the PEO has employees working in Washington.

**Q10. Do out-of-state PEOs have to keep records physically in Washington state?**

- A. No. However, PEOs must provide a physical address in Washington where records will be made available for inspection. If neither the PEO nor the client company has a physical location in Washington state, include the following on the registration form: "The client company and PEO will make all requested records available within seven

days at the office requested by the Employment Security Department.” Read the proposed rule ([WAC 192-300-210\(6\)](#)) for details. (Please also see Q31.)

**Note:** The PEO may provide different locations for each client company.

**Q11. How do PEOs notify Employment Security when a client company joins or leaves the PEO? Is there a form?**

- A. PEOs must use the [Report New Client/Report of Termination](#) form whenever a client company leaves or joins the PEO. The completed form must be sent to the department within 30 days. Read the proposed rule ([WAC 192-300-210\(5\)](#)) for details.

**Q12. Do PEOs have to obtain a power of attorney for all of their client companies? How do they submit the information to Employment Security?**

- A. Yes, PEOs must submit a signed [power-of-attorney form](#) for each client company. Fax the signed form to 360-902-9291, or print and mail it to the address at the bottom of the form. See the proposed rule ([WAC 192-300-210\(4\)](#)) for details.

**Q13. How do PEOs file quarterly tax and wage reports?**

- A. Under the new law, PEOs will be required to file quarterly tax-and-wage reports, broken out by individual client companies. The Employment Security Department recommends that they file reports electronically in one of two ways:

- File a separate electronic report for each client company using *UIFastTax* or *UIWebTax*; or
- Use Washington ICESA format to send a single file that contains separate reports for each client company.

These electronic options are available at [www.efile.go2ui.com](http://www.efile.go2ui.com). PEOs also have the option of filing a separate paper report for each client company (forms 5208A and 5208B).

See the proposed rule ([WAC 192-300-210\(7\), \(8\) and \(9\)](#)) for details.

**Q14. When do PEOs have to begin filing separate reports for each client company?**

- A. PEOs must file separate reports beginning with the first quarter of 2008. Those reports will be due by April 30, 2008. However, PEOs may begin filing separate reports now if they prefer.

**Q15. Will a PEO be able to make a single payment for all of its client companies?**

- A. Currently, this is not an option, but a single-payment system is being developed. We expect to have it ready by the time the first individual reports are due (April 30, 2008, for the first quarter of 2008).

To be notified as new information becomes available, sign up for the PEO listserv and we will send you an e-mail. Sign up online at [www.wa.gov/esd/taxinfo](http://www.wa.gov/esd/taxinfo) - be sure to check the box for Professional Employer Organization Communication to receive updates.

**Q16. How is the PEO's tax rate determined?**

- A. For 2008, the PEO's tax rate will be calculated the same way as it has been in the past, using the experience of the PEO and its client companies prior to July 1, 2007. The department has proposed rules to outline how tax rates will be determined in future years ([WAC 192-300-220](#)).

**Note:** Only PEOs with employees in Washington state will be assigned an unemployment tax rate for Washington, but all PEOs that have client companies with employees in Washington must register with us.

**Q17. How is the client company's tax rate determined?**

- A. Client companies that joined a PEO before July 1, 2007 will be assigned the PEO's tax rate for 2008. Client companies that joined a PEO on or after July 1, 2007, and already have their own rate will continue to be assigned their own rate for 2008 based solely on their own experience.

The department has proposed rules to outline how tax rates will be determined in future years ([WAC 192-300-220](#)).

**Q18. Does the client company's tax rate change if it joins or leaves a PEO in the middle of the year?**

- A. After January 1, 2008, each client company will have its own tax rate, so the rate will not change if a company joins or leaves a PEO, regardless of the time of year.

**Q19. What if the PEO doesn't pay the client company's taxes? Who's ultimately responsible?**

- A. The client company is responsible for all taxes due, including penalties and interest for late or incomplete reports. However, unless the PEO has informed the department that the client company has not paid the costs, the department will attempt to collect from the PEO first. PEOs also may provide a bond to cover payments. Read the proposed rule ([WAC 192-300-230](#)) for details.

**Q20. What if the PEO pays late or makes a mistake on the client company's tax report?**

- A. The client company is ultimately responsible for all taxes due, including penalties and interest. However, if the PEO makes a mistake, files a late report or does not submit proper payment, the department will attempt to collect from the PEO first. Read the proposed rule ([WAC 192-300-230](#)) for details.

**Note:** If neither the PEO nor the client company has paid all taxes due or made payment arrangements by September 30, that client company will receive the delinquent tax rate for the following year.

**Q21. What does it mean to “revoke” a PEO?**

A. It means that the PEO can no longer represent that client company to the department. Read the proposed rule ([WAC 192-300-230\(6\)](#)) for details.

**Q22. There’s a lot you don’t know yet. How will I know when ESD makes final decisions on outstanding issues?**

A. To be notified as new information becomes available, sign up for the PEO listserv and we will send you an e-mail. Sign up online at [www.wa.gov/esd/taxinfolist](#) - be sure to check the box for Professional Employer Organization Communication to receive updates on this topic.

**Q23. Can I be involved in or comment on the decision-making process?**

A. The department has drafted regulations ([rules](#)) to clarify how the new law will be carried out. To receive information, including invitations to public meetings on this topic, contact Juanita Myers at [jmyers@esd.wa.gov](#) or 360-902-9665.

**Q24. Do I need to do anything differently if I’m not a PEO?**

A. No.

**Q25. Who do I call if I have questions or need more information?**

A. Please email your question to [status@esd.wa.gov](#). An ESD staff person will get back to you.

**Q26. I’m not a PEO. Why did I get this letter?**

A. When you registered your business, you were classified as a professional employer organization (industry code 561330), or your business activity was listed as PEO, professional employer or employee leasing. To make sure we covered all businesses that might be affected by this new law, we mailed the letter to everyone in those categories.

**Q27. What if the PEO does not handle all of a client company’s employees? For example, the PEO reports all of the client company’s hourly employees, but the client company has elected to report all salaried employees itself OR the PEO reports the client company’s management personnel, while the client company reports the rest of its staff.**

A. If more than one quarterly report is filed for a single company, the company must first set up a branch account with the department. Then, the quarterly report for each segment of employees that is reported will include the client company’s ES reference number and a branch number (e.g., -01, -02, -03).

To set up a branch account, write on your registration form that you want us to set up your account as a branch account.

**Note:** The department will consolidate the branch accounts to calculate future tax rates.

**Q28. I don't understand the instruction on the power-of-attorney form. Can someone help me?**

A. Contact your [district tax office](#) if you need help completing the power-of-attorney form.

**Q29. Does the PEO need to register if its client company does not have employees in Washington right now, but has in the past?**

A. If neither the PEO nor the client company has employees in Washington, registration is not required. However, the department recommends registering so that the requirement has been already taken care of if employees are added in Washington in the future. This also ensures that the PEO will receive relevant mailings.

**Q30. Is the Employment Security (ES) reference number the same thing as the state unemployment-insurance (UI) number?**

A. Yes. The format of the number is: 123456 78 9.

If the number begins with 600, 601 or 602 and is formatted like this: 60x 456 789, it is the Unified Business Identifier (UBI) number, not the ES reference number.

**Q31. What address should be given for record inspection if the client company has employees in Washington, but does not have a physical location in the state?**

A. If neither the PEO nor the client company has a physical location in Washington state, we can review records at one of our offices. In this case, include the following on the registration form: "The client company and PEO will make all requested records available within seven days at the office requested by the Employment Security Department."

**Q32. If the client company or PEO had to apply for an account number and does not get the number until after the registration deadline, should it submit an incomplete registration form and/or power-of-attorney form?**

A. Yes. Complete the form with all information except the ES reference number and send the form to us by September 1, 2007. Once you get the account number(s), provide it to us using a [Business Change Report](#) form.

### **Questions related to third-party representatives**

**Q1. If the client company of a PEO also is represented by a third-party administrator, should the third-party administrator use the new power-of-attorney form or the form it has used in the past for other client companies?**

A. The [new form](#) is required for companies that are PEO clients. If the third-party administrator represents the client company directly, the new form should be used.

**Q2. If the PEO itself is represented by a third-party and the PEO adds a new client company, do the PEO and the third-party representative both need to submit new power-of-attorney forms?**

A. The new client company of the PEO would need to complete a [power-of-attorney form](#) designating its preferred mailing addresses for each section. The third-party representative would not need to send anything additional if it already has a form on file showing that it represents the PEO itself.

**Q3. If a third-party representative is listed as the address of record for its PEO client companies, will that address automatically be assigned to the PEO's client companies or does a separate form need to be submitted?**

A. Each client company must provide a [power-of-attorney form](#) designating which address is preferred for each section.

**Q4. What if a third-party representative adds a new PEO client after the registration deadline?**

- A. The third-party representative would need to send in a new [power-of-attorney form](#) for the PEO within 30 days.

If the PEO adds a new client company after the initial registration period, the PEO needs to submit a [Report New Client/Report of Termination](#) form and a new power-of-attorney form for that client company within 30 days.